

## TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

### NOTICE IS HEREBY GIVEN

The California Corporations Commissioner ("Commissioner") proposes amendments to the following code sections in the California Code of Regulations, which are reasonably necessary to correct technical inaccuracies in various provisions in the Code of Regulations that have been rendered inapplicable as a result of the passage of time or modifications to other provisions in the Code of Regulations or the California Corporations Code. The Commissioner proposes to amend Sections 260.004, 260.017.1, 260.101, 260.102.14, 260.165, 260.210, 260.211, 260.230.1, 260.231A, 260.236, 260.236.1, 260.237.2, 260.240, and 260.241.3; and to repeal Sections 260.103.3 and 260.237.1 of Title 10 of the California Code of Regulations.

### PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Legislation and Policy, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., April 27, 2009. Written comments may also be sent to Karen Fong via electronic mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Based on its review of several sections of the Code of Regulations, the Commissioner believes that a number of references and sections in the Code of Regulations are either incorrect or outdated, and others have been rendered inapplicable as a result of the passage of time or revisions to other provisions in the Code of Regulations or the Code.

### Sections 260.102.14, 260.236.1, 260.237.2, and 260.241.3

These sections of the Code are no longer accurate and therefore minor, technical, and clean up changes are proposed.

### Section 260.004

The first sentence of Section 260.004(a) addresses exchanges that desire to be certified as excluded from the definition of a "broker-dealer" pursuant to "subdivision (d) of Section 25004" of the Code. However, Section 25004 of the Code does not contain a subdivision (d). The only reference to an "exchange" in Section 25004 of the Code

appears in subdivision (a)(7) thereof, which provides that a “broker-dealer” does not include an exchange certified by the Commissioner pursuant to Section 25004 of the Code when it is issuing or guaranteeing options. Accordingly, the reference to “subdivision (d) of Section 25004” in the first sentence of Section 260.004(a) is proposed to be replaced with “subdivision (a)(7) of Section 25004”.

Section 260.004(b), which was adopted in 1975, refers to “a plan filed pursuant to Rule 9b-1 under the Securities Exchange Act of 1934”. The U.S. Securities and Exchange Commission (the “SEC”) adopted Rule 9b-1 in 1973 to require exchanges to file plans regulating transactions in options. (See Securities Exchange Act Release No. 10,552 (December 13, 1973).) But after the adoption of Section 260.004(b), the SEC repealed Rule 9b-1 because its procedures were largely duplicated by the new Section 19(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 19b-4 promulgated thereunder with respect to the filing of self-regulatory organizations' rule changes generally. (See Securities Exchange Act Release No. 11,604 (August 19, 1975).) In 1982, the SEC adopted a new Rule 9b-1 promulgated under the Exchange Act. This new rule was part of a package of new rules designed to make the disclosure of information about standardized options more meaningful to investors and less burdensome to registrants and others. Accordingly, Section 260.004(b) is proposed to be amended to refer to “Rule 19b-4” rather than “Rule 9b-1” and reference a “filing” under it rather than a “plan” filed pursuant to it.

#### Sections 260.017.1 and 260.103.3

Section 260.017.1 defines the term “voting shares” as used in subdivision (f) of Section 25103 of the Code. Similarly, Section 260.103.3 refers to “the term ‘voting shares’ as used in subdivision (f) of Section 25103 of the Code”. Formerly, clause (1) of Section 25103 of the Code required qualification of any stock split or reverse stock split only if “the corporation ha[d] more than one class of *voting* shares outstanding” (italics added). As a result of amendments to Section 25103 of the Code enacted in 1976, the term “voting shares” no longer appears in Section 25103(f) of the Code. However, the term “voting shares” is included in Sections 260.105.6(b), 260.105.6(c) and 260.105.17(a)(4)(A). Accordingly, the reference to “Subsection (f) of Section 25103 of the Code” in Section 260.017.1 is proposed to be replaced with references to Sections 260.105.6(b), 260.105.6(c) and 260.105.17(a)(4)(A), and Section 260.103.3 is proposed to be repealed.

#### Section 260.101

Section 260.101 addresses the exemption from qualification of securities issued by nonadmitted insurance companies. Specifically, this section provides that nonadmitted insurance companies that do not meet certain security holder or asset tests contained in Section 12(g)(1)(B) of the Exchange Act are not exempted from registration by Section 12(g)(2)(G) of the Exchange Act within the meaning of Section 25101(b) of the Code, and their securities are ineligible for exemption pursuant to Section 25101(b) of the Code from the provisions of Section 25130 of the Code. Prior to August 27, 1997, Section 25101(b) of the Code (“Former 25101(b)”) exempted from the provisions of Section 25130 of the Code securities issued by, among others, any person who was an issuer of any security registered under Section 12(g) of the Exchange Act

or exempt from registration under Section 12 thereof by Section 12(g)(2)(G) of the Exchange Act, or any person that was registered under the Investment Company Act of 1940, subject to certain filing obligations. Effective August 27, 1997, the provisions constituting Former Section 25101(b) were deleted from the Code. (Chapter 391, Section 7, Statutes 1997.) As part of these amendments, a revised version of former Section 25101(c) of the Code that addresses the circumstances under which certain securities issued by a person that is an issuer of a security listed on a national securities exchange, or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), would not be exempt from the provisions of Section 25130 of the Code, was renumbered as Section 25101(b) of the Code. As a result of the 1997 amendments to Section 25101 of the Code, Section 260.101 has been rendered meaningless and proposed to be deleted in its entirety.

#### Section 260.165

Section 260.165 sets forth the form of consent to service of process. The form includes a form of notarial acknowledgment. California Assembly Bill 886 Chapter 399, Statutes of 2007 was signed into law and makes several significant changes in current notarial law, including the amendment of California Civil Code Sections 1185 and 1189 as described below. Effective January 1, 2008, Section 1185 of the California Civil Code was amended to provide that the identity of the person making an acknowledgment may no longer be established by personal knowledge alone and instead must be established by specified documents or a credible witness who is personally known to the notary public and proves their identity by specified documents. The certificate of acknowledgment is now executed under penalty of perjury and must be in the form set forth in California Civil Code Section 1189. Accordingly, the "Acknowledgment" section of Section 260.165 is proposed to be amended to conform to current law.

#### Section 260.210

Section 260.210(a) relating to agent procedures for broker-dealers refers to "the Uniform Application for Securities Industry Registration and Transfer Form (Revised 11/97) ('Form U-4')". Pursuant to SEC Release No. 34-48161, July 10, 2003, effective July 14, 2003, as amended by SEC Release No. 34-48161A, July 16, 2003, effective July 14, 2003, the SEC changed the title of the Uniform Application for Securities Industry Registration or Transfer Form from "U-4" to "U4" ("Form U4"). The correct title of Form U4 is the "Uniform Application for Securities Industry Registration **or** Transfer Form" (bold and underline added). In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form U4. Accordingly, the reference to "the Uniform Application for Securities Industry Registration and Transfer Form (Revised 11/97) ('Form U-4')" in Section 260.210(a) is proposed to be restated as "the Uniform Application for Securities Industry Registration or Transfer Form ('Form U4')". In addition, the references to "Form U-4" appearing elsewhere in Section 260.210 and in Sections 260.236.1 and 260.241.3 are proposed to be restated as "Form U4". In addition, Section 260.210(a) contains a reference to Section 260.141.1, which was repealed effective April 6, 2008. Accordingly, the reference to "Section 260.141.1" appearing in Section 260.210(a) is proposed to be deleted.

Section 260.210(b)(4) refers to “the Uniform Termination Notice for Securities Industry Registration Form (Revised 11/97) (‘Form U-5’). Pursuant to SEC Release No. 34- 48161, July 10, 2003, effective July 14, 2003, as amended by SEC Release No. 34- 48161A, July 16, 2003, effective July 14, 2003, the SEC changed the title of the Uniform Termination Notice for Securities Industry Registration Form from “U-5” to “U5” (“Form U5”). In addition, in 2003 Section 25612.3 was added to the Code to mandate the use of Form U5. Accordingly, the reference to “the Uniform Termination Notice for Securities Industry Registration Form (Revised 11/97) (‘Form U-5’)” in Section 260.210(b)(4) is proposed to be restated as “the Uniform Termination Notice for Securities Industry Registration Form (‘Form U5’). In addition, the references to “Form U-5” appearing elsewhere in Section 260.210 and in Section 260.236.1 should be restated as “Form U5”.

#### Section 260.211

Sections 260.211(a)(1)(A) and 260.211(b)(1)(B)5 refer to “Customer Authorization of Disclosure of Financial Records (Form QR 500.261 (1/00)”. The State of California Department of Corporations Customer Authorization of Disclosure of Financial Records form is contained in Section 260.231(i). Accordingly, the references to “Customer Authorization of Disclosure of Financial Records (Form QR 500.261 (1/00)” in Sections 260.211(a)(1)(A) and 260.211(b)(1)(B)5 is proposed to be restated as “Customer Authorization of Disclosure of Financial Records in Section 260.231(i) of these rules”.

#### Section 260.230.1

Section 260.230.1(a) relating to notice filing requirements of registered investment advisors and Section 260.240(a) relating to consent to service of process each refer to “Form ADV (Uniform Application for Investment Adviser Registration), as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001”. Effective April 7, 2006, the SEC adopted technical amendments to Form ADV. In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form ADV. Accordingly, the references to “Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001” in Sections 260.230.1(a) and 260.240(a) are proposed to be restated as “Form ADV (Uniform Application for Investment Adviser Registration).

#### Section 260.236

Section 260.236(c)(3)(A) relating to qualifications of investment advisors and investment adviser representatives refers to the “Association for Investment Management and Research” and Section 260.236(c)(3)(D) refers to the “Investment Counsel Association of America”. On April 19, 2005, the Investment Counsel Association of America changed its name to the “Investment Adviser Association”. Accordingly, the references to “Association for Investment Management and Research” in Section 260.236(c)(3)(A) is proposed to be restated as “CFA Institute”. In addition, the references to “Investment Counsel Association of America” in Section 260.236(c)(3)(D) is proposed to be restated as “Investment Adviser Association”.

### Section 260.237.1

Pursuant to its terms, Section 260.237.1 became inoperative effective January 1, 2005. Therefore, Section 260.237.1 is proposed to be deleted in its entirety. In addition, the introductory sentence of Section 260.237.2 is proposed to be eliminated and the reference to Section 260.237.1 in 260.241.3(a)(6) is proposed to be deleted.

### Section 260.240

Section 260.240(b) relating to consent to service of process refers to "Form BD (Uniform Application for Broker-Dealer Registration), as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999". Effective April 23, 2007, the SEC adopted technical amendments to Form BD, the uniform broker-dealer registration form pursuant to SEC Release No. 34-55643, dated April 19, 2007. In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form BD. Accordingly, the reference to "Form BD (Uniform Application for Broker-Dealer Registration), as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999" in Section 260.240(b) is proposed to be restated as "Form BD (Uniform Application for Broker-Dealer Registration).

### AUTHORITY

Sections 25102, 25165, 25211, 25230, 25230.1, 25231, 25236(a), 25237, 25240, 25241, 25610, and 25612.5, Corporations Code.

### REFERENCE

Sections 1189, 1633.7, 1798.17, Civil Code; Section 17520, Family Code; Sections 25004, 25017, 25101, 25102, 25103, 25165, 25210, 25211, 25213, 25213.3, 25216, 25217, 25230, 25230.1, 25231, 25236, 25237, 25240, 25241, 25510, 25608, 25608.1(d), 25608(p), 25612.3, 25612.5, 25613, and 25620, Corporations Code; and Section 11077.1, Penal Code.

### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 18/08 - B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request

Document PRO 18/08 - C. These documents are also available at the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Legislation and Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### FISCAL IMPACT

- Cost or savings to any state agency: none.
- Direct or indirect costs or savings in federal funding to the state: none.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: none.
- Other nondiscretionary costs/savings imposed on local agencies: none.
- Costs to private persons or businesses directly affected: insignificant or none.

#### DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not affect small businesses.
- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations will not affect small business. The amendments to the rules are clean-up.

### CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to Karen Fong at (916) 322-3553. The backup contact person is Tanya Bosch at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Colleen Monahan, Deputy Commissioner at (916) 322-3553.

Dated: January 30, 2009  
Sacramento, California

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Colleen E. Monahan  
Deputy Commissioner  
Office of Legislation and Policy